

**AGREEMENT BETWEEN  
SOUTH MONTEREY COUNTY FIRE PROTECTION DISTRICT AND  
THE CITY OF MONTEREY FOR  
USE OF DRAFT COMMANDER**

This Vehicle Use Agreement (this "Agreement") is made and entered into by and between South Monterey County Fire Protection District (SOMOCO) and the City of Monterey (the "City"), (each a "Party" and collectively the "Parties"), with reference to the following facts.

A. SOMOCO owns that mobile fire pump testing and training unit commonly referred to as the Draft Commander and more particularly described as set forth below (the "Vehicle").

Make	<u>CIMAR</u>
Model	<u>DRAFT COMMANDER</u>
VIN	<u>5PACB232XDC008080</u>
Year	<u>2013</u>
Tag	<u>E-951599</u>

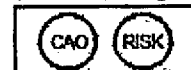
B. The City desires to use the Vehicle for the purpose of fire pump testing and training within the jurisdictional limits of the city and the neighboring municipalities and agencies served by the City's Fire Department.

C. SOMOCO is willing to rent the Vehicle to the City for such use on the terms and conditions set forth in the Agreement.

NOW, THEREFORE, based on the foregoing and in consideration of the mutual terms, covenants and conditions contained in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. **TERM.** The term of this Agreement will commence on February 1, 2017, end on January 31, 2018. Thereafter, it will automatically renew for five (5) additional years ending on January 31, 2023, unless terminated by either party upon thirty (30) days prior written notice.

A. **ANNUAL TRAINING PERIOD.** SOMOCO hereby grants the City temporary use of the Vehicle for a period of up to 30 days per year for annual training. The annual 30-day training period shall commence on a date determined by mutual written agreement between the City's Fire Chief or Assistant Fire Chief and SOMOCO; it may be extended beyond 30 days by their mutual written agreement. SOMOCO will deliver the Vehicle to the City's fire station at 600 Pacific Street, Monterey, California, on or before 2:00 p.m. of the commencement date of agreed training period. The Vehicle shall be available for pickup by SOMOCO from the same location on or after 2:00 p.m. of the last day of the annual training period. The City



shall cooperate in accommodating earlier delivery and/or later pick up of the Vehicle if reasonably requested by SOMOCO.

- B. **AGREEMENT TERM:** The term of this Agreement will commence on February 1, 2017, end on January 31, 2018. Thereafter, it will automatically renew for five (5) additional years ending on January 31, 2023, unless terminated by either party upon thirty (30) days prior written notice.

2. **RENT.** The City shall compensate SOMOCO for use of the Vehicle at the rates set forth in the Draft Commander Cost Sheet attached hereto as Exhibit A and incorporated herein by this reference. Payment should be made out to "South Monterey County Fire Protection District" and is due within thirty (30) days upon receipt of invoice from SOMOCO.

3. **RESTRICTIONS ON USE.** The City may use the Vehicle solely for the purpose described in Recital B above and for no other purpose without the prior written consent of SOMOCO. The City shall transport the Vehicle only over properly constructed paved road surfaces in good condition. The city shall not allow the Vehicle to be towed by anyone other than (a) properly training City Fire Department personnel possessing a valid and appropriate driver license for the category of equipment being operated and free of any restrictions other than for vision correction devices or (b) other drivers possessing such driver licenses any who have been both designated in writing by the City and approved in advance by SOMOCO. The City shall assure that any towing of the Vehicle fully complies at all times with all applicable laws regarding motor vehicle use and towing in California. The City shall be responsible for all fees and fines (including, but not limited to, speeding tickets, parking tickets, etc.) relating to its use of Vehicle.

4. **CONDITION OF VEHICLE.** SOMOCO will maintain and pay for any necessary registration with the Department of Motor Vehicles pertaining to the Vehicle. Prior to delivery, SOMOCO will check and service, if necessary, all major systems of the Vehicle (e.g., brakes, electrical components, suction hoses, tank, appliances, suspension and tires). SOMOCO will deliver the Vehicle in clean and good working condition. At the time of delivery, SOMOCO will provide the city with a list of any minor defects in the Vehicle, whether cosmetic or mechanical. The city shall at all times maintain the Draft Commander in clean, safe and good working condition. SOMOCO retains the right to suspend or terminate this Agreement immediately and take possession of the Vehicle if the City fails at any time to maintain the Vehicle in the condition required above. The City shall return the Vehicle at the end of the Term, or any earlier termination of this Agreement, in the same condition in which the Vehicle was delivered.

5. **REPAIR OF BREAKDOWNS DUE TO NORMAL USE.** SOMOCO shall be responsible for making or arranging for the making of, and paying for, repair of mechanical failures of the Vehicle due to normal usage for which the Vehicle is designed. If such a mechanical failure occurs, the city shall contact SOMOCO as soon as is reasonably possible and in any event not later than seventy-two (72) hours after the breakdown. Thereafter, SOMOCO shall promptly act to cause the necessary repairs to be made, unless the damage is so extensive as to render repair infeasible or undesirable in SOMOCO's sole and absolute judgment. In no event



shall the City cause any repairs to be undertaken without first obtaining SOMOCO's written authorization to do so. During any day or portion of a day in which the Vehicle is unavailable for use due to mechanical failure of the type contemplated by this section, rent for the Vehicle shall be equitably abated but the Term shall not be extended by reason thereof, except by mutual written agreement of the Parties.

6. **REPAIRS DUE TO OTHER CAUSES.** The City shall be responsible for the costs of any repairs necessitated by the City's neglect or misuse of the Vehicle, accidents occurring during the Annual Training Term, or by any cause other than that set forth in Section g. In the event that repairs under this Section 6 become necessary, the city shall contact SOMOCO as soon as is reasonably possible and in any event not later than seventy-two (72) hours after the need for repair arises. Thereafter, the city and SOMOCO shall promptly cooperate to cause the necessary repairs to be made at the City's sole cost and expense by repair facility of SOMOCO's choosing, in the exercise of its reasonable discretion. In no event shall the city cause any repairs to be undertaken without first obtaining SOMOCO's written authorization to do so. There shall be no abatement of rent during any period of time in which the Vehicle is unavailable for use due to a need for repairs under this Section 6 and the City shall remain liable for the payment of rent for each day until the Vehicle is fully repaired and returned to SOMOCO to be put back in to service.

7. **LIABILITY.** The City assumes all risks arising out of its use and operation of the Vehicle. The City shall be responsible for any and all damages to the Vehicle, and to any other property caused by its operations or use of the Vehicle. The City shall report to SOMOCO any accident(s) involving property damage, or death or injury to any person(s) as soon as is reasonably possible and in any event not later than twenty-four (24) hours after the occurrence. In the case of an accident for which the City is determined not to be at fault, the city will cause claims to be made and diligently pursued against the party or parties at fault, and any applicable insurance carrier, at no cost to SOMOCO.

8. **INSURANCE.** SOMOCO will maintain a basic policy of liability insurance on the Vehicle with coverages in amounts selected by SOMOCO in its sole and absolute discretion. Additionally, during the Term, the City shall cause SOMOCO to be named as an additional insured under the City's policy(ies) of liability insurance pertaining to vehicles and shall provide to SOMOCO a certificate evidencing such insurance coverage and meeting SOMOCO's reasonable satisfaction on or before delivery of the Vehicle at the commencement of the Term. SOMOCO may, but shall not be required to, insure the Vehicle against damage or loss. In the event of any accident, other incident, or loss occurring during the Term and covered or potentially covered by any of the insurance described in this section, the City shall fully cooperate with SOMOCO and any applicable insurance carrier(s) with regard to the processing and handling of any claim(s) and the defense of any action(s) against SOMOCO. To the extent that any loss of or damage to the Vehicle during the Term is covered by any insurance carried by SOMOCO, the city shall be responsible for payment of any applicable deductible. If SOMOCO's insurer(s) refuse(s) to defend or indemnify SOMOCO against any claim(s) as a result of any action or inaction by the City, then the city shall be responsible to defend and fully indemnify SOMOCO against such claim(s).



9. **NOTICES.** Any notice or other communication required or permitted to be delivered to any Party under this Agreement shall be in writing and shall be deemed properly delivered, given and received; (a) when delivered by hand; (b) on the day sent by facsimile provided that the sender has received confirmation of the transmission as of or prior to 5:00 p.m. on such day; (c) the first business day after sent by facsimile (to the extent that the sender has received confirmation of transmission after 5:00 p.m. on the day sent by facsimile); or (d) the third business day after sent by registered mail or by courier or express delivery service, in any case to the address or facsimile telephone number set forth beneath the name of such party below (or to such other address or facsimile telephone number as such Party shall have specified in a written notice given to the other Party hereto:

If to SOMOCO:

South Monterey County Fire Protection District  
Attn: Theresa Volland  
2221 Garden Road  
Monterey, California 93940  
(831) 333-2645

If to the City:

City of Monterey  
Attn: Michael McCarthy, City Manager  
City Hall  
580 Pacific Street  
Monterey, California 93940  
(831) 646-3793 Fax

10. **INDEMNIFICATION.** The City agrees to indemnify, defend and hold harmless SOMOCO, its agents and officers, from and against any and all costs, expenses or liability incurred as a result of any claim, suit, lien or other legal proceeding (including attorney's fees) resulting from the City's negligent performance, willful misconduct or breach arising from the use of the Vehicle or the performance of this Agreement.

11. **ASSIGNMENT.** Neither Party shall have the right, power or authority to assign or encumber any rights or interest in this Agreement or any portion of this Agreement, or to delegate any duties or obligations arising under this Agreement, voluntarily, involuntarily, or by operation of law, without the prior written consent of the other Party.

12. **THIRD-PARTY RIGHTS.** This Agreement has been made and is made solely for the benefit of the parties and their respective permitted assigns. Nothing in this Agreement, express



or implied, is intended to confer upon any individual or entity, other than the parties and their respective permitted assigns, any rights or remedies.

13. **LAW AND VENUE.** The formation, interpretation, performance and enforcement of this Agreement shall be governed by the laws of the State of California. The parties agree that any suit, action or proceeding arising out of or relating to this Agreement shall be instituted only in a California State Court located in the County of Monterey.

14. **ATTORNEY'S FEES AND COSTS.** In the event of any action or proceeding in law or in equity arising out of or in connection with this Agreement or to enforce or interpret any of the terms of this Agreement, the prevailing Party in such action shall be entitled to have and recover from the non-prevailing party reasonable attorneys' fees, including fees on appeal, in addition to such other relief as may be granted. Each party shall bear its own attorneys' fees and costs incurred in the negotiation and implementation of this Agreement.

15. **ENTIRE AGREEMENT.** This Agreement is a full and complete statement of the Parties' understanding with respect to the matters set forth in this Agreement. This Agreement supersedes and replaces any and all prior or contemporaneous agreements, discussions, representations or understandings between the Parties relating to the subject matter of this Agreement, whether oral or written. No addition, alteration, amendment, change or modification to this Agreement shall be binding upon the Parties or either of them, unless reduced to writing and signed by both of the Parties.

16. **DRAFTING OF AGREEMENT.** It is understood and agreed by the Parties that this Agreement has been arrived at through negotiation and deliberation by the parties, with each Party having had the opportunity to review and revise this Agreement and to discuss the terms and effect of this Agreement with counsel of its choice. Accordingly, any rule of law or legal decision that should require interpretation of any ambiguities in this Agreement against the party that has drafted it is not applicable and is waived.

17. **SEVERABILITY.** Any provision of this Agreement held to be void or unenforceable under applicable law shall be deemed stricken and all remaining provisions of this Agreement shall continue to be valid and binding upon the Parties.

18. **AUTHORITY.** Each person signing this Agreement on behalf of a Party expressly represents and warrants that he or she has received full and complete authority to sign this Agreement on behalf of that Party, by the exercise of any necessary powers governing the execution of contracts by that Party, and that no further approval of any kind is necessary to bind that Party to this Agreement.

19. COUNTERPARTS. This Agreement may be signed in any number of counterparts, each of which shall be deemed an original and all of which taken together shall constitute one and the same complete instrument. The signature page of each counterpart may be detached from such counterpart and attached to a single document, which shall for all purposes be treated as an original. Faxed, photocopied or e-mailed signature shall be deemed originals for all purposes. This Agreement shall be effective as to each Party when that Party has executed and delivered a counterpart hereof.

IN WITNESS WHEREOF, the undersigned do hereby execute this Agreement as of the dates set forth below, the latest of which shall be deemed to be the effective date of this Agreement.

SOUTH MONTEREY COUNTY  
FIRE PROTECTION DISTRICT

CITY OF MONTEREY

*Neressa Holland*  
by *John Owens*

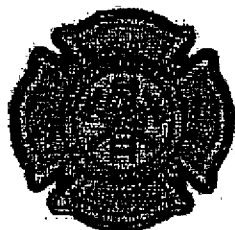
by *Michael McCarthy*

*Neressa Holland, Secretary*

Michael McCarthy, City Manager

Dated: 2/1/17, 2017

Dated: 2/1, 2017



## Exhibit A

### South Monterey County Fire Protection District

#### Draft Commander Cost Sheet:

- **Rental for 1 Day:** \$350.00 Includes Set Up/Pick Up and instruction and for days use
- **2 Day Package:** \$500.00 Includes Delivery/Set Up/Pick Up
- **7 Day Package:** \$1100 Includes Delivery/Set up/Pick Up and instruction.
- **Additional Daily Rate:** \$150.00
- **All rentals are based on business days.**

Note: To "Pump Test" you will have to have a qualified pump tester on site.

For more information on the Draft Commander visit:  
<http://www.draftcommander.com/whatis.htm>